IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2468 OF 2004

Shyam Gupta ... Petitioner

Vs.

State of Maharashtra & Ors. Respondents

Mr. E.K. Sasidharan for Petitioner.

Mr. G.W. Mattos, A.G.P. for Respondent Nos. 1 to 4.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 08, 2004

P.C.

1. Rule. Heard forthwith.

2. This petition was earlier filed before the learned Division Bench of this Court. By order of 30.9.2004 it has been placed before this court considering Writ Petition No. 1533 of 2004 which was pending before this court. By this Petition, the Petitioner seeks reliefs by way of direction or order to Respondent nos. 2 and 3 to give police protection to the Petitioner to reconstruct structure admeasuring 20' x 20' on the land bearing C.T.S. No. 1053, Near Lido Cinema, Santacruz (West), Mumbai 400 049. The other reliefs are in aid of the first relief to enable the Petitioner to reconstruct the structure admeasuring 20 ft x 20 ft.

3. The case of the Petitioner is similar to what was urged on behalf of the Petitioner in Writ

Petition No. 1533 of 2004. His claim is based on an order passed in Appeal from Order No. 1164 of 1992 dated 13.11.1992. The petitioner and fourteen others pursuant to the order of the Court went to take possession of the land and reconstruct their respective structures as per order dated 13.11.1992 passed by this court in Appeal from Order No. 1164 of 1992. They were however prevented from reconstructing by the police Authorities. They filed a contempt petition which was dismissed. When the land was vacant some third party encroached on the land land put up construction thereon. Those eight structures were demolished including one belonging to Mohammed Akram. After demolition of Mohd. Akram's structure, one Shri. Lakhamshi Ramji Gala (since deceased) was in occupation of one such unauthorised construction on the encroached land. His construction was not demolished. Said Lakhamsi Gala filed Misc. Application No. 4 of 2000 before the Maharashtra Slum Tribunal and by misrepresentation managed to obtain order of status quo and taking advantage of the said order his son Mansukh constructed one more structure on the place where one Mohammed Akram was encroached and whose structure was demolished. It is set out that Lakhamsi Gala had originally constructed a hut unauthorisedly by encroachment on the land and continued to occupy the same and his son Mansukh illegally and unauthorisedly by misrepresenting on order of status quo granted by

the Tribunal constructed another structure. It is also averred that Mansukh manipulated the photopasses granted in the name of one Rajkumar Choudhary (since deceased) to fabricate the documents to save the unauthorised structure. As the Association of which Petitioner was member, could not get the illegal structure removed, they moved the Slum Tribunal by Application dated 21.1.2000 for vacating the order of status quo. Being helpless, the Association filed petition being Writ Petition No. 1196 of 1994 before this court. The same was disposed of by order dated 12.4.2000 directing the Slum Tribunal to dispose of the application made by the Association dated 21.1.2000. The application of the Association was then heard and the interim order of 30.8.2000 was vacated. It is then set out that said Mansukh filed suit in Bombay City Civil Court being Civil Suit No. 2390 of 2001. An injunction was sought against the Municipal Corporation to restrain them from demolishing the structure. Before the suit was filed and or any order could be passed, the Municipal Corporation demolished the structure. In the suit, Commissioner was appointed to visit the site and report about the exact situation. The Commissioner noted that the structure had been demolished and the inspection report is on record in L.C. Suit No. 2390 of 2001. As he was party to the said suit, at his instance, President of the Association made application to be joined as party

defendant. That was granted by the Court. The Notice of Motion was contested and by Order dated 29.9.2002 motion was dismissed. Against that an Appeal from Order was preferred. That was summarily dismissed by this court. After that suit itself being Suit No. 2390 of 2001 was dismissed. Based on this the petitioner submits that he has a right to the land. He ought to be entitled to reconstruct on the said land.

4. On the other hand, Respondent No. 1 and the State Authorities contend that the structure which is subject matter of the dispute was also in issue before the Additional Collector (Encroachment) and which dispute was disposed off by order dated 6.1.2004. One of the Applicants therein was Mansukh Gala. In so far as Mansukh Gala is concerned, various proceedings which were pending were noted and considering that it was held that it would not be appropriate to issue the photo pass to Mansukh at that stage. It was directed that legal opinion be taken in the matter of issuing photo passes and after receipt of that opinion, position regarding issue of photo passes would be taken. The learned A.G.P. points out that by decision on 27.8.2004, the Government has issued direction that the photo passes be issued subject to further scrutiny. The said Shri. Mansukh Gala is not party to the present petition.

5. It is in the light of that, that the controversy must be decided. To seek relief as the petitioner has sought for, the petitioner must firstly establish that he has a legal right on land of which he was an encroacher and to construct on an identified part on which his structure stood and was demolished and on which he had right to reconstruct based on the order of this court passed in Appeal From Order. That order by itself as noted earlier was passed as far back as 13.11.1992. That order held that 14 members whose cases were represented by Bombay Zopadpatti Sangh were entitled to reconstruct. There is nothing to show on which part or to what extent the reconstruction ought to be allowed. Thereafter Contempt Proceedings were taken out on the ground that members were not allowed to reconstruct. That was dismissed on the ground that they were allowed to reconstruct and on inspection 11 structures were found of which seven structures were demolished by following due process.

6. From the above and the order passed in Contempt Petition, it would be clear that petitioners have no legal right as pursuant to the order in A.O. he had already put up construction. It is not known whether the petitioner's construction was one of the construction which was demolished. It is not possible to know whether the petitioner has transferred his construction to some other persons

as seven new persons were found than the original persons. Apart from that in the absence of the petitioner making out a case, that he has right to an identified part of the plot or making out case and or establishing that he has photo pass for the construction, it will not be possible to direct respondents to permit the petitioner who otherwise have not been able to establish any legal right to construct on the land which does not belong to him. The Petitioner in order to get such relief must establish that he has right to the land and or otherwise even if he had no right to the land, pursuant to the photo passes issued to him for the structure he is protected considering the orders issued by the Government in respect of said structures and hence has right. The Petitioner has been unable to discharge that burden which he has to discharge. In the absence of the petitioner disclosing any legal right in himself, as far as part of land is concerned, it will not be possible to grant relief as prayed for. Even otherwise, as can be noted, in the averments in the petition in Paragraph 8, it is the case of the Petitioner that it is Mansukh Gala who has put up structure on the land where his structure was standing. Said Mansukh Gala is not a party to the present petition.

7. Considering what is stated above, this will not be a fit case to grant any relief. Rule

discharged. No order as to costs.

(F.I. REBELLO,J.)